

# UNITED STATES BANKRUPTCY COURT

## SOUTH CAROLINA

### Clerk's Instruction: Proceedings to Modify Stay (CI-4001-1<sup>1</sup>)

#### (a) Section 362 Relief from the Automatic Stay Motions

Hearing dates and locations for scheduling § 362 motions are posted on the court's Internet web site at [www.uscourts.gov](http://www.uscourts.gov), on PACER Classic and are available from the Intake Division of the Clerk's Office.

The moving party must:

- (1) Select a Hearing Date: The moving party must select a hearing date from a list of available dates provided by the clerk and must:
  - (A) Schedule the motion in all cases, if it is made in a Columbia Division case, in Columbia before the judge assigned to the case, absent conflict;
  - (B) Schedule the motion in chapters 7, 12 and 13 cases, if it is made in a Charleston or Spartanburg Division case, in the same division as the case; the motion may be scheduled before any judge assigned to sit in that division;
  - (C) Schedule the motion in chapter 11 cases, if it is made in a Charleston or Spartanburg Division case, in the same division as the case and before the judge assigned to the case, absent conflict (see also, paragraph (a)(3) (A) following);
  - (D) Prepare a hearing notice (Local Official Form 4001-1(b) of South Carolina Local Rule Bankruptcy Rule 4001-1 (SC LBR 4001-1)) and indicate the date, time of hearing and hearing location. The hearing notice shall be signed by the attorney representing the movant or by the movant only, if *pro se*.

If the moving party selects a hearing date which is more than 30 days after the moving party makes its request for relief, the moving party is deemed to have consented to a waiver of its rights under § 362(e) relating to the automatic lifting of the stay. The stay remains in effect until further order of the court.

If the moving party fails to select a hearing date, the moving party shall be deemed to have waived the automatic lifting of the stay pursuant to § 362(e) and the court may, in its discretion, either schedule a hearing on the motion or deny the relief sought.

- (2) Serve and Transmit the § 362 Motion: At least fifteen (15) days prior to the scheduled hearing date, the moving party must serve on at least the debtor, attorney for the debtor, any trustee serving the case, the United States Trustee if a chapter 11 case, any committee elected or appointed in the case, and any other party in interest entitled to notice pursuant to Federal Rule of Bankruptcy Procedure 4001(a) (Fed. R. Bankr. P. 4001(a)):
  - (A) the § 362 motion;
  - (B) the notice of hearing of the motion (notice should indicate the date, time and location of

---

<sup>1</sup> See SC LBR 4001-1

- hearing)(Local Official Form 4001-1(a));
- (C) the moving party's certification of facts (Local Official Form 4001-1(b));
- (D) a blank certification of facts (applicable to service on *pro se* parties only);
- (E) a certificate of service of items a-d.

**Note:** The motion must be accompanied by a fee prescribed by 28 U.S.C. § 1930(b) and the appendix thereto. **The moving party should determine if the case has been dismissed or closed prior to filing these documents; filing fees will not be refunded for motions filed in dismissed or closed cases.**

(3) Please take notice that if the movant:

- (A) requires a hearing date within the thirty (30) day period before a specific judge (Ch. 11's), and the judge assigned to the case is not scheduled for that city within that time, the movant must contact a courtroom deputy clerk for assistance which may include scheduling the motion for hearing in Columbia, if deemed necessary;
- (B) is aware of another matter in the case previously scheduled, and the movant has selected a § 362 hearing date which is in close proximity (the day before or the day following), the movant may contact a courtroom deputy clerk as indicated above and inquire as to whether or not the § 362 motion can be heard at the same date and time;
- (C) is filing a multi-part motion (§ 362 motion which contains alternative relief i.e., dismissal, conversion), the above procedure applies to noticing the § 362 motion only. Hearing notices and/or hearing dates on the alternative relief must be prepared using the passive notice procedure prescribed by SC LBR 9014-2 and the accompanying "Clerk's Instruction : Motions (Passive Notice) (CI-9014-2)"<sup>1</sup> or must be obtained from the clerk's office for matters not on the Passive Notice List;
- (D) is unable to select a hearing date which is at least fifteen (15) days from the date of the service/transmittal of the motion for relief from, or modification of, the automatic stay, and it is necessary that the hearing be held within thirty (30) days from the request to lift the stay, the movant may shorten the service/transmittal time frame outlined in "b" of SC LBR 4001-1 and the objection time outlined in "d" of SC LBR 4001-1. If the movant is still unable to select a hearing date under these shortened time frames, the movant must communicate this to the judge's staff .

## **(b) Consent Agreements**

A motion for the approval of an agreement pursuant to Fed. R. Bankr. P. 4001(d) should be prepared using the form approved by the court (Local Official Form 4001-4) of SC LBR 4001-4.

If a debtor fails to comply with the terms of a consent order, which provides for the modification of the 11 U.S.C. § 362 stay, the moving party, who seeks relief from the stay, shall submit a certification of the debtor's noncompliance and a proposed order granting the relief sought. Modification of the stay is effective only upon entry of the order.

---

<sup>1</sup> Clerk's Instructions are available on the court's Internet Web site at [www.scb.uscourts.gov](http://www.scb.uscourts.gov), PACER Classic, and at the Intake Division of the clerk's office.

(c) Section 1301 Co-Debtor Motions

The movant must:

- (1) Serve and transmit the Motion: The movant should prepare and serve the motion and passive notice of motion giving parties twenty (20) days to object using the form approved by the court (Local Official Form 9014-2(a) of SC LBR 4001-1). The moving party should list the co-debtor in the motion. The moving party should serve on at least the debtor, attorney for the debtor, the trustee, if one is appointed, the co-debtor and any other interested party entitled to notice pursuant to Bankruptcy Rule 4001(a), and simultaneously transmit to the clerk of court for filing:
  - (A) the § 1301 motion;
  - (B) the passive notice of motion which gives parties twenty (20) days to object;  
and
  - (C) a certificate of service of items (a) and (b).
- (2) Objections: Within twenty (20) days from the filing of (a) and (b) above on the other parties in interest, each objecting party should serve on the moving party and file with the clerk its objection to the motion and certification of such service.

(d) Conflicts

Operating Order 00-3 of this court, filed July 17, 2000 provides that when a § 362 motion is filed that involves a judge's conflict:

- (1) A case in which Chief Judge Wm. Thurmond Bishop has a conflict is to be assigned to Judge John E. Waites;
- (2) A case in which Judge John E. Waites has a conflict is to be assigned to Chief Judge Wm. Thurmond Bishop.